

Appeal from a decision of the Eastern States Office, Bureau of Land Management, rejecting noncompetitive oil and gas lease offer for acquired lands ES-32593.

Affirmed.

1. Accounts: Refunds--Oil and Gas Leases: Acquired Lands--Oil and Gas Leases: Applications: Filing--Oil and Gas Leases: Known Geologic Structure--Oil and Gas Leases: Noncompetitive Leases

BLM must reject a noncompetitive oil and gas lease offer for acquired lands pursuant to 43 CFR 3112.5-2(b) where the land sought to be leased is determined to be within a known geologic structure after a simultaneous oil and gas lease drawing but prior to lease issuance. In such circumstances, the offeror is not entitled to a refund of the filing fee submitted with her lease application or interest on the first year's advance rental submitted with her lease offer.

APPEARANCES: Evelyn D. Ruckstuhl, pro se.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Evelyn D. Ruckstuhl has appealed from a decision of the Eastern States Office, Bureau of Land Management (BLM), dated October 16, 1984, rejecting her noncompetitive oil and gas lease offer for acquired lands, ES-32593. Appellant's simultaneous oil and gas lease application was drawn with first priority for parcel ES-136 in the May 1983 simultaneous oil and gas lease drawing.

By decision dated September 21, 1983, BLM notified appellant that she was the successful drawee for parcel ES-136 and required her to submit executed copies of a lease offer, with attached stipulations, and the first year's advance rental payment "within 30 days from the date of your receipt of this decision." On October 24, 1983, appellant submitted to BLM executed copies of her lease offer and the first year's advance rental.

By memorandum dated January 9, 1984, the Acting District Manager, Milwaukee District Office, notified the Director, Eastern States Office, that certain land, including the SE 1/4 NE 1/4 sec. 7, T. 26 N., R. 8 W., Michigan Meridian, Kalkaska County, Michigan (the land covered by appellant's lease offer) had been placed within an undefined addition to the South Boardman Field Undefined Known Geologic Structure (KGS), effective December 28, 1983. In its October 1984 decision, BLM rejected appellant's lease offer pursuant to 43 CFR 3112.5-2(b) because the lands included in her offer were within a KGS. BLM stated that appellant would be issued a refund of her first year's advance rental within "6 to 8 weeks."

In her statement of reasons for appeal, appellant contends BLM should issue a noncompetitive oil and gas lease where the KGS determination was made "long after a reasonable period of time for the lease to have been issued \* \* \* after the drawing." In the alternative, appellant states that BLM should refund the first year's advance rental with "interest" and the \$75 filing fee submitted with her simultaneous oil and gas lease application.

[1] Section 17(b) of the Mineral Leasing Act, as amended, 30 U.S.C. § 226(b) (1982), provides that public domain lands which are within the KGS of a producing oil or gas field "shall be leased \* \* \* by competitive bidding." This limitation applies equally to the leasing of acquired lands pursuant to section 3 of the Mineral Leasing Act for Acquired Lands, as amended, 30 U.S.C. § 352 (1982), which provides that acquired lands "may be leased \* \* \* under the same conditions as contained in the leasing provisions of the mineral leasing laws." See 43 CFR 3100.3-1. It is well settled that where lands embraced in a noncompetitive oil and gas lease offer are determined to be within a KGS at any time prior to issuance of a lease, the noncompetitive lease offer must be rejected. Evelyn D. Ruckstuhl, 85 IBLA 69 (1985); Elcoex, Inc., 68 IBLA 130 (1982); 43 CFR 3112.5-2(b). 1/ Rejection of a lease offer is mandated even where, but for the delay in lease issuance, the lease might have issued prior to the KGS determination. Marc W. Richman, 86 IBLA 143 (1985). The Department has no discretion to issue a noncompetitive oil and gas lease for KGS lands. McDonald v. Clark, 771 F.2d 460, 464 (10th Cir. 1985); McDade v. Morton, 353 F. Supp. 1006 (D.D.C. 1973), aff'd, 494 F.2d 1156 (D.C. Cir. 1974); Frederick W. Lowey, 76 IBLA 195 (1983). Accordingly, we conclude that BLM properly rejected appellant's noncompetitive acquired lands oil and gas lease offer. R. L. Mulholland, 61 IBLA 175 (1982).

At the time appellant submitted her simultaneous oil and gas lease application, the applicable regulation, 43 CFR 3112.6-1 (1982), provided that

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1/ 43 CFR 3112.5-2(b) provides that:

"If, prior to the time a lease is issued, all or part of the lands in the offer are determined to be within a known geological structure of a producing oil or gas field, the offer shall be rejected in whole or in part as may be appropriate and the lease, if issued, shall include only those lands not within the known geological structure of a producing oil or gas field." At the time appellant submitted her simultaneous oil and gas lease application, this regulation was codified at 43 CFR 3112.6-2(b) (1982).

"[f]iling fees for rejected filings are the property of the United States and shall not be returned." See also 43 CFR 3103.2-1(a) (1982). The regulation applied to the rejection of simultaneous oil and gas lease applications. Appellant's lease application could clearly have been rejected when the land involved herein was determined to be within a KGS subsequent to the lease drawing and the filing fees would have been subject to retention under this regulation. See Shaw Resources, Inc., 79 IBLA 153, 91 I.D. 122 (1984). The fact that BLM had required appellant to submit a lease offer prior to the KGS determination would not preclude retention of the filing fee under this regulation. The filing fee was earned at the time appellant's lease application was filed. See Robert C. Meredith, 44 IBLA 213 (1979); Albert E. Mitchell, III, 20 IBLA 302 (1975). Effective August 22, 1983, the Department amended the regulations applicable to noncompetitive oil and gas leasing, providing, in relevant part, that the \$ 75 filing fee submitted with a simultaneous oil and gas lease application is "nonrefundable." 43 CFR 3112.2-2 (48 FR 33678 (July 22, 1983)). There is no evidence in the preamble to this regulation that the Department portended any change in the law. Accordingly, we conclude that appellant is not entitled to a refund of her \$ 75 filing fee.

Appellant is entitled to, and the October 1984 BLM decision provides for, a refund of the first year's advance rental submitted with her lease offer. Appellant, however, is not entitled to any interest which would have accrued since submitting the rental payment because there is no statutory provision authorizing the payment of interest on rental paid in connection with a noncompetitive oil and gas lease offer in the case of rejection of the offer and refund of the rental. Romola A. Jarett, 63 IBLA 228, 89 I.D. 207 (1982).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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Gail M. Frazier  
Administrative Judge

We concur:

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C. Randall Grant, Jr.  
Administrative Judge

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R. W. Mullen  
Administrative Judge

